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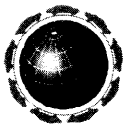

Alliance OF AUTOMOBILE MANUFACTURERS

February 11, 2002

The Honorable Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

RE: Motor Vehicle Safety: Acceleration of Manufacturer's Remedy (66 Fed.Reg. 64087, December 11, 2001) Docket No. NHTSA 2001-11108, Notice 1

Dear Dr. Runge:

The Alliance of Automobile Manufacturers (Alliance), whose members are BMW Group, DaimlerChrysler, Fiat, Ford Motor Company, General Motors, Isuzu, Mazda, Mitsubishi Motors, Nissan, Porsche, Toyota, Volkswagen, and Volvo, submits the following comments in response to the above referenced notice. This notice proposes rules to implement Section 6(a) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (P.L. 106-414).

Before turning to individual issues raised by the proposal, the Alliance wishes to make an overall observation about the authority granted to NHTSA by Section 6(a) of TREAD. At least for the manufacturers of light vehicles, there is no systemic problem with the process of administering safety recalls in a prompt fashion. In the NPRM, NHTSA expressed the view that this new authority will "be invoked infrequently, since in the large majority of cases the manufacturer's original remedy program will resolve the defect or noncompliance in a timely fashion." 66 Fed.Reg. 64087, 64090 (December 11, 2001). The Alliance agrees with this observation, which will influence many of the comments that follow.

It is clear from the context in which this provision was enacted, as well as from the statutory findings that must be made before the authority can be exercised, that Congress intended this to be an extraordinary remedy to be used in those rare instances in which avoidable delays in the availability of service facilities or parts are creating an imminent risk of deaths or serious injuries. The provision was enacted in direct response to Firestone Tire's initial decision in 2000 to compensate consumers only if they replaced the recalled tires with other tires manufactured by Firestone, which in many cases were unavailable due to supply shortages. There is no indication that Congress thought that this situation occurs frequently, or that manufacturers are routinely taking too long to implement safety recalls or that there is a widespread problem with safety recall management requiring other than rare intervention by NHTSA.

1. **"Risk of Serious Injury or Death."**

The statute requires NHTSA to make two findings before it can exercise its authority to order acceleration of a remedy program. One of the required findings is that there is a risk of serious injury or death if the remedy program is not accelerated.

The preamble creates the impression that NHTSA does not take this required finding very seriously, observing that "[t]o make this finding, there need only be a risk of such injury or death, not necessarily a high probability, and most safety recalls address circumstances where there is such a risk." 66 Fed.Reg. at 64088. The assumption, therefore, is that NHTSA could readily make this finding with

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respect to virtually every recall. The Alliance strongly disagrees. Most safety recalls do not involve an "imminent hazard" to life or limb, which is the sort of emergency that Congress was addressing with this new provision. Even though every safety defect recall presumptively addresses an "unreasonable risk" of injury or fatality, not every risk is imminent. Often, safety recalls address potential risks that could arise only after a long period, resulting, for example, from the degradation of a part. Most significantly, the standards for conducting a recall are not the same as the standards for triggering NHTSA's new authority to compel acceleration of the remedy. Otherwise, Congress would not have needed to add a requirement for a special finding that there is a risk of serious injury or death in the absence of remedy acceleration. Instead, Congress would have been silent, or would have announced a presumption that any safety recall qualifies for the assumption that there is a risk of serious injury or death in the absence of acceleration. Congress did not do this, however; instead, it imposed a requirement that NHTSA make a special finding that there would be a risk of "serious injury or death" unless the recall is accelerated.

The Alliance recommends that the text of proposed §573.14(b)(1) be revised to state that the Administrator may order acceleration when (among other findings) the "Administrator finds that there is an imminent risk of serious injury or death if the remedy program is not accelerated."

2. **Expanding the sources of replacement parts.**

The statute also requires NHTSA to find that acceleration of a safety recall "can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both."

NHTSA has proposed to implement this provision with a requirement that "the remedy that is provided shall be equivalent to the remedy that would have been provided if the program had not been accelerated." NHTSA does not propose standards by which this "equivalence" shall be determined, nor does the agency propose who will make the "equivalence" determination. Moreover, NHTSA does not specify whether "equivalence" refers only to engineering performance of the component, or whether it also includes consideration of warranties and post-recall service availability.

While we agree that the availability of aftermarket parts could be important in the consideration of the potential to accelerate a remedy, the issue of whether and when aftermarket parts are "equivalent" to parts manufactured by or for the automobile manufacturers is complex and highly controversial. The auto insurance industry has been involved in extensive litigation over the practice of authorizing the use of aftermarket components in repairing vehicles damaged in collisions. See, e.g., GAO Report 01-225, *Motor Vehicle Safety: NHTSA's Ability to Detect and Recall Defective Replacement Crash Parts Is Limited.*

Experts do not agree on how to assess the "equivalence" of aftermarket parts, but it certainly requires something more than availability, especially because very few of the replacement parts used in recalls are required to meet any Federal Motor Vehicle Safety Standards in their own right when sold in the aftermarket. Moreover, without testing to assure compatibility and equivalent performance, vehicle manufacturers will often not know whether an aftermarket part is suitable for installation on their vehicles, and would be unable to comply with any requirement to "notify the agency and owners about any differences among different sources or brands of parts". (See proposed §573.14(d).) Testing to verify the suitability of aftermarket parts is both expensive and time-consuming.

Consider these examples: substituting a tire with an alternative tire that has the identical size, type, and Uniform Tire Quality Grade does not guarantee that the alternative tire is "equivalent" to the originally specified tire on performance characteristics such as tire ply steer, noise, rolling resistance and tire uniformity. Likewise, an aftermarket brake rotor may not have the same manufacturing quality, durability, endurance, and stopping distance performance characteristics as the original part. Substitution of an aftermarket brake rotor could lead to extensive secondary costs incurred from

increased customer complaints about brake noise or other satisfaction issues. This may cause the customer to lose confidence in the manufacturer conducting the recall and possibly deter participation in future recalls.

Moreover, the aftermarket part will carry its own warranty, and will not be covered by the vehicle manufacturer's warranty. Thus, consumers who experience post-repair problems with the performance of the newly installed aftermarket part will have to deal separately with that part supplier to obtain warranty service, which will annoy consumers. (As an aside, it should be noted that NHTSA has proposed excluding component suppliers from most of the "early warning" reporting requirements, so this hypothetical post-repair warranty claim would not be reported to NHTSA under the early warning system. This is another reason why NHTSA should want to invoke this new authority only in rare instances.)

The Alliance submits that NHTSA, not the vehicle manufacturers, will have to make the decision that an aftermarket part is "equivalent" to a component manufactured to the vehicle manufacturer's specifications before ordering a manufacturer to expand a recall program to include aftermarket components. This is an essential part of the statutory finding that "acceleration of the program can be reasonably achieved by expanding the sources of replacement parts," and is an essential responsibility that accompanies the new authority. NHTSA should also announce the standards by which it will judge the "equivalence" of aftermarket and original components for purposes of this section.

3. **Adding Assembly Lines/Shifts.**

NHTSA asserted that one method of expanding the sources of replacement parts could be by adding assembly lines and/or production shifts within a factory. First, installing an additional production line on short notice is nearly impossible. Manufacturers do not have the ability to simply install an additional shift while allowing other operations to continue uninterrupted or unimpaired. Plants and factories are not equipped with extra machinery for use on "stand-by." Further, manufacturers do not have a labor pool that can be diverted from its current tasks to a new line of production without training.

Second, diverting a component production line that is dedicated to normal production requirements would have a ripple effect that could result in curtailing production or stopping production completely for certain models, including models manufactured by other vehicle manufacturers who are supplied by the same supplier, but otherwise uninvolved in the recall. Models that cannot be equipped with parts (because the component production line was diverted to the recall remedy part) cannot be properly built, delivered, or sold. The inability to produce the finished vehicle means the inability to purchase other components pursuant to existing supply agreements and the inability to supply finished products to others, which harms unrelated vehicle manufacturers who may be dependent upon the diverted production line, consumers whose new vehicle purchases are delayed, other suppliers whose deliveries are deferred awaiting restoration of full vehicle production, as well as the recalling manufacturer.

Third, the Alliance observes that adding production capacity at factories or diverting production resources from one component to the recall component can be very costly, both in terms of the direct labor costs as well as the lost revenue from the component (or vehicle) that is not being manufactured while the employees are redeployed to manufacture the recall remedy. Again, the Alliance notes that NHTSA has not projected significant costs to be associated with this new rule, both because NHTSA assumed that the authority to expand the recall will be invoked infrequently and because NHTSA concluded that expanding the sources of the remedy would ordinarily not add significantly to the pre-existing recall costs. If, however, NHTSA orders a manufacturer to add an assembly line or divert resources to produce more recall remedies, the costs would be substantial, including costs to manufacturers uninvolved in the recall, but adversely affected by the diversion.

Fourth, some labor agreements in the industry restrict the hiring of temporary employees, preclude purchasing parts from outside sources (outsourcing), and limit the amount of overtime. Further, labor contracts in some plants and factories located overseas, such as in Germany, require the explicit agreement of the union before a manufacturer may add shifts. This agreement is mandatory pursuant to German labor law. Accordingly, union agreement is an absolute necessary precondition to any such change to production shifts. Union consent is also a necessary precondition before any individual union member may work in a different area or undertake different responsibilities than those previously agreed to in the union contract. Before NHTSA orders a manufacturer to add assembly lines and/or production shifts within a factory, NHTSA should consider the effect of such an order on existing labor agreements.

Finally, NHTSA has overlooked the potential international implications of some acceleration orders involving foreign plants or factories. Because the automotive industry is engaged in a substantial amount of international cross-border trade, the ripple effects of closing a factory line or interrupting delivery on parts could be felt outside the United States. To the extent an acceleration order affects employment or the flow of goods in a foreign market, there is a risk that the foreign government whose market has been disrupted may take a different view of the issue than NHTSA does, even to the point of issuing a competing order requiring the assembly line or plant to remain open.

For all of these reasons, the Alliance believes that the incremental costs of accelerating a remedy program, as well as the possible effects on existing labor agreements and potential international sensitivities, must be taken into account by NHTSA when it determines whether acceleration is "reasonable," as the statute requires.

4. **Expanding the number of authorized repair facilities.**

NHTSA noted that "major vehicle manufacturers have large networks of dealers to perform repairs," so that NHTSA would ordinarily not expect to make a finding reflecting the need for Alliance members to expand the number of authorized repair facilities. The Alliance agrees with this observation.

NHTSA also noted, however, that it could order a manufacturer to expand the number of repair facilities when "an owner would have to travel a large distance to obtain the remedy repair directly from the manufacturer or one of its dealers." The Alliance strongly disagrees that this scenario is one that authorizes NHTSA to invoke the authority to order an expansion of the number of repair facilities. Vehicle purchasers factor into their purchase decisions the convenience with which the vehicles can be serviced. Presumably, if a person chooses to purchase a vehicle that cannot be serviced at a convenient location, s/he has decided to accept the inconvenience of traveling to obtain service, including recall work when necessary. The extraordinary authority granted to NHTSA by Section 6(a) of TREAD was not intended to be invoked merely to improve convenience for some individuals who have chosen to buy vehicles some distance away from their homes.

For those rare instances in which this authority is invoked to expand the number of authorized repair facilities, NHTSA has proposed to require that the "service procedures shall be reasonably equivalent." NHTSA does not specify whose responsibility it will be to assure "reasonable equivalence" of service procedures. The Alliance agrees that NHTSA could reasonably require the additional facilities to follow the repair procedure specified by the manufacturer conducting the recall. NHTSA could not, however, hold the recalling manufacturer responsible for the quality or accuracy of the repair conducted by persons who are authorized by NHTSA to perform the recall repair. If NHTSA orders manufacturers to notify vehicle owners of these alternate repair facilities, the Alliance questions whether the agency will permit that notification to include any language questioning the competence or qualifications of the alternative facilities. Since any subsequent accident due to incorrect labor procedures could result in litigation against the manufacturer, it is unfair to expect the vehicle manufacturer to be responsible for assuring the "equivalence" of the service procedures between authorized, trained dealerships and other locations.

Moreover, there is no infrastructure through which a manufacturer can readily provide remedy parts to these unrelated facilities and there is no obligation for an independent authorized dealer to sell a recall part to a non-authorized dealer. Likewise, there is no infrastructure through which a manufacturer can readily communicate to these unrelated facilities VIN lists of vehicles involved in a recall. Most recalls involve only segments of a model year and/or subsets of a vehicle model (such as vehicles built between certain production dates or built with certain sales codes reflecting optional equipment). These data are not always easily identified by facilities unfamiliar with the product and they normally are not concerned with verification of VIN's as a basis for repair. As a result, there must be some mechanism for these facilities to verify that a vehicle is actually involved in the recall so that repairs are not performed on vehicles not involved in the recall. Manufacturers cannot be expected to honor requests for reimbursement from an owner of a vehicle that was not actually involved in a recall campaign. There is no infrastructure to track the completion of a vehicle repaired by one of these facilities, resulting in a potential significant reduction in the known completion rate of the recall. Moreover, there is no way to prevent these facilities from overcharging the owner for the recall remedy, and no way to prevent theses facilities from performing additional repair work on a vehicle and alleging that it was required as a result of the defective recalled component (such as replacing several common brake parts like pads, calipers and rotors when only one is identified as the defective component). These are serious issues that require attention in the final rule.

5. **Hearing or Opportunity for Consultation.**

NHTSA has not proposed to provide the recalling manufacturer an opportunity to be heard before NHTSA orders expansion of a recall. The Alliance believes that, at a minimum, the Administrative Procedure Act requires that NHTSA should consult with the recalling manufacturer and provide the company with an opportunity to be heard on the questions of whether there is a risk of serious injury or death if the remedy program is not accelerated and whether acceleration of the program can reasonably be achieved. NHTSA should specify explicitly that the affected manufacturer will be given the opportunity to present information, views and arguments to the agency before a final decision to expand the remedy program is made.

6. **Notification**.

Consistent with the discussion above relating to the fact that replacement parts from other vendors will carry their own warranties, and the fact that service from sources other than the vehicle or equipment manufacturer will not be guaranteed by the original vehicle or equipment manufacturer, recalling manufacturers should be permitted to include in the notification a statement advising the customer to check the service or part source to determine what warranties it provides. The manufacturer should also be permitted to state that it does not warrant the service or parts from the other sources.

Proposed section 577.12(c)(2) should provide for the possibility that after consultation between a manufacturer and NHTSA, the manufacturer might agree to take steps voluntarily to accelerate the remedy, rather than pursuant to an order. (This point is consistent with the issue raised in Section 5., above, relating to an opportunity for consultation with the affected manufacturer before NHTSA orders acceleration. If there is such consultation, and if the consultation results in agreement for voluntary action, then the specific requirements of §577.12 would appear not to be triggered, because §577.12(a) explains that the notification requirements apply only when the Administrator requires acceleration.)

The Alliance submits that the proposed language addressing consumer reimbursement in the context of an accelerated campaign (proposed §577.12(c)(6)) may be confusing to consumers, especially in light of the language NHTSA proposes to require in a routine recall letter. (See the Alliance letter of this date in Docket 2001-11107 urging more flexibility in that language, as well.) In the acceleration context, the Alliance thinks the letter should simply explain what costs will be covered, how to obtain the

reimbursement (whether by writing the manufacturer or by visiting a dealer), and how to obtain more information from the manufacturer. NHTSA should not attempt to prescribe the exact wording of the notification, in order to permit manufacturers to conform the style and readability of the language to the rest of the notification letter.

The Alliance appreciates this opportunity to provide comments to the agency.

Sincerely yours,
Alliance of Automobile Manufacturers, Inc.

Robert S. Strassburger
Vice President
Vehicle Safety and Harmonization

cc: Mr. Kenneth N. Weinstein, Esq.
Associate Administrator for Safety Assurance

Docket Management, Room PL-401